

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

New England Power Pool and
ISO New England, Inc.

Docket Nos. ER03-1141-003

Maine Public Utilities Commission

EL03-222-003

v.

New England Power Pool and
ISO New England, Inc.

ORDER DENYING REHEARING AND
GRANTING CLARIFICATION

(Issued December 2, 2004)

1. In this order, the Commission denies rehearing of an order accepting proposals by the New England Power Pool (NEPOOL) and ISO New England, Inc. (ISO-NE) for the allocation of transmission upgrade costs.¹ This order benefits customers by promoting the construction of new transmission facilities and ensuring equitable distribution of their costs.

I. Background

A. Allocation of costs of transmission upgrades

2. For several years, NEPOOL, ISO-NE, state commissions and New England market participants have been trying to develop an appropriate method of allocating the costs of transmission upgrades among those parties who benefit from those upgrades. The Commission has stated that, when transmission upgrades benefit the entire pool, they should receive regional cost support, and the costs should be shared by the entire pool of

¹ New England Power Pool and ISO New England, Inc., 105 FERC ¶ 61,300 (2003) (December 18 Order).

New England market participants.² If, on the other hand, new transmission facilities are built to benefit particular participants or groups of participants, participant funding – *i.e.*, allocation of the costs to that participant or participants – is appropriate for those projects. New England parties have been struggling, however, to resolve the question of how to allocate costs where there is no agreement as to the beneficiaries of a particular transmission upgrade.

3. In December 2002, to provide a mechanism that would apply in such situations, the Commission ordered NEPOOL and ISO-NE to develop a default mechanism that would allocate the costs of transmission upgrades in an objective, non-discriminatory manner and respect the principle of cost causation.

4. In response to the Commission's directive, NEPOOL and ISO-NE conducted an extensive stakeholder process to develop this default mechanism, based on which ISO-NE developed and presented a proposal to New England stakeholders. The proposal recommended participant funding for certain types of transmission upgrades,³ and regional cost support for projects identified through ISO-NE's Regional Transmission Expansion Plan (RTEP) process as being necessary for reliability or economic purposes. The modified proposal was then approved by 78 percent of NEPOOL participants.

² ISO New England, Inc., 91 FERC ¶ 61,311 at 62,076-77 (2000) (June 28, 2000 Order) ("We direct the ISO to revise its proposal to . . . develop objective, non-discriminatory guidelines to allocate costs where participants are unable to agree on the allocation of costs").

³ ISO-NE recommended participant funding for elective transmission upgrades, generator interconnection related upgrades, merchant transmission facilities, Local Benefit Upgrades (facilities rated below 115 kV, or else rated 115 kV or above but not meeting the non-voltage criteria for Pool Transmission Facilities (PTF) classification), and Localized Costs. Localized Costs are upgrade costs that state or local authorities determine are desirable for economic or environmental reasons (such as, for example, construction of transmission lines underground), but ISO-NE determines are not necessary for reliability reasons.

PTF are defined in the Restated NEPOOL Agreement as the transmission facilities rated 69 kV or above required to allow energy from significant power sources to move freely on the New England transmission network. The TCA amendments raise the voltage level of PTF to 115 kV.

B. NEPOOL and ISO-NE filing and Coalition proposal

5. On July 31, 2003, NEPOOL and ISO-NE jointly filed the Transmission Cost Allocation Amendments (TCA Amendments) to the NEPOOL Tariff and the Restated NEPOOL Agreement to implement the proposal.

6. In their application, NEPOOL and ISO-NE stated that currently, NEPOOL relies on market participants to provide resources (generation, demand-side projects, and merchant transmission) to New England. In the event, however, that the market process does not provide necessary resources, the existing RTEP process enables ISO-NE to collect input from all stakeholders and identify necessary upgrades: either reliability upgrades, which are not required by the interconnection of a generator, but are nevertheless "necessary to ensure the continued reliability of the NEPOOL system," or economic upgrades, which provide net economic benefits to the region.⁴ NEPOOL and ISO-NE stressed that under their proposal (discussed at greater length in the December 18 Order at P 3-7), the default cost allocation mechanism would apply only "after the market has had an opportunity to respond to identified opportunities for market-based solutions, including participant-funded transmission", and that it would apply only to upgrades that provide system-wide benefits.⁵ NEPOOL and ISO-NE further emphasized the integrated and dynamic nature of the New England grid, and the extent to which its usage and beneficiaries fluctuate over time:

Needed upgrades of a sufficient size to one part of the New England grid virtually always provide diffuse benefits throughout the integrated network, often immediately and certainly over the useful life of those facilities.⁶

7. Further, the TCA Amendments would provide an objective, bright-line and easy-to-apply test for determining when upgrades should be pool-supported. Thus, NEPOOL and ISO-NE concluded, the TCA Amendments supported the Commission's goal of broad and economically efficient regional markets.

8. Several parties opposed the TCA proposal. Additionally, the Coalition Supporting Beneficiary Funding, consisting of the Maine Public Utilities Commission (Maine Commission), the Maine Public Advocate, the Rhode Island Public Utilities Commission (Rhode Island Commission), Pinpoint Power, NRG Energy, Inc. (NRG), and Gen Power,

⁴ NEPOOL and ISO-NE July 31, 2003 filing, transmittal letter (transmittal letter) at 7-8.

⁵ *Id.* at 12.

⁶ *Id.* at 13.

LLC, (collectively, the Coalition) filed a complaint advocating another proposal, under which 25 percent of the costs of all regional plan-approved transmission facilities would be allocated regionally, and the remaining 75 percent would be allocated to primary beneficiaries.⁷

C. December 18 Order

9. In its December 18 Order, the Commission denied the Coalition's complaint, and approved the TCA Amendments as just and reasonable:

The proposal rolls in the costs of upgrades for reliability and upgrades that provide net economic benefits to the region as a whole when participant agreement does not occur. The Commission considers the proposal submitted by ISO-NE and NEPOOL to be a clear, transparent, and non-discriminatory method for allocating these costs and consistent with the principles of open access transmission service. The clear guidelines will provide greater certainty to entities investing in transmission by providing certainty on cost recovery. As such, given the widespread support among market participants, the Commission believes that the proposal submitted by ISO-NE and NEPOOL is an acceptable example of regional choice.⁸

10. Additionally, the Commission found that the TCA Amendments represented the choice of the region. It stated that it had issued numerous orders to New England parties to develop an objective, non-discriminatory default cost allocation mechanism, and that it had previously made clear that it would respect regional choices – particularly the choices of a regional state committee (RSC) – in this regard. The Commission found that the TCA proposal was a regional choice, stating:

While an RSC has not yet been formed in New England, there has been extensive participation by state representatives including state commissions in the regional discussions that led to both the proposal of ISO-NE and NEPOOL and the [Coalition's] counter proposal It is clear from the pleadings in this case that there is no consensus among the state representatives on the [default cost allocation mechanism]. The proposal submitted by ISO-NE and NEPOOL is supported by state representatives from Massachusetts and Connecticut. State representatives from Maine and Rhode Island are sponsors of the alternative proposal contained in the

⁷ Complaint of Maine Public Utilities Commission, *et al.*, filed on August 21, 2003 in Docket No. EL03-222-000 at pp. 2-3.

⁸ *Id.* at P 23.

Complaint. Vermont has proposed another approach to cost allocation. While there is no consensus among the state representatives there is widespread consensus among the market participants for the proposal filed by ISO-NE and NEPOOL. The proposal was approved by approximately 78% of NEPOOL.⁹

II. DISCUSSION

A. Procedural matters

11. Requests for rehearing of the December 18 Order were filed by the Vermont Department of Public Service (Vermont Commission), Maine Commission, Calpine Eastern Corporation and Calpine Energy Services L.P. (Calpine), and Central Maine Power Company (Central Maine). NEPOOL and ISO-NE filed a response to the above rehearing requests. Central Maine filed an answer to NEPOOL and ISO-NE's response. Central Maine also filed a motion for clarification that the December 18 Order does not constitute the Commission's final determination with regard to the allocation of costs for certain upgrades in southwest Connecticut.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 U.S.C § 385.213(a)(2), prohibits an answer to a request for rehearing, or an answer, unless otherwise ordered by the decisional authority. We will accept NEPOOL and ISO-NE's response to the requests for rehearing, and Central Maine's answer to the response, because they have provided information that assisted us in our decision-making process.

B. The Commission correctly found that the TCA Amendments are just and reasonable.

1. Requests for rehearing

13. Central Maine and Maine Commission assert that in approving the TCA Amendments, the Commission has departed from the principle of determining cost allocation by cost causation (i.e., costs should be allocated to those parties who cause the costs to be incurred), a "bedrock principle" of Commission ratemaking for many decades, and departed from the goals of Locational Marginal Pricing (LMP).¹⁰ Maine Commission argues that the Commission is abandoning the transparency of price signaling that the implementation of LMP was designed to bring about, and asserts that

⁹ December 18 Order at P 22-23.

¹⁰ Central Maine request for rehearing at 12.

the Commission failed by ignoring Maine Commission's proposed alternative to the TCA Amendments, including allowing 25 percent of the costs of an upgrade to be spread across the region. Vermont Commission and Central Maine also argue, with regard to transparency, that the net benefits test will result in non-transmission solutions (to congestion or reliability problems) that will not be able to compete on a level playing field with transmission solutions that receive regional cost support.

14. Vermont Commission and Maine Commission also add that the Commission's statement that its regional choice approach will minimize disputes over "today's beneficiaries . . . when the beneficiaries can change over the life of the upgrades"¹¹ is not an acceptable justification, because it does not respect the principle of actual cost causation. Maine Commission and Central Maine argue that the TCA Amendments will not necessarily promote the construction of new transmission facilities by providing greater certainty to investors regarding cost recovery, since investors have just as much certainty with total or partial beneficiary funding.

15. Further, according to Central Maine, Maine Commission and Vermont Commission, the fact that the New England grid is highly integrated, so that upgrades will provide diffuse benefits throughout the network, is not a sufficient nexus between expansion costs and expansion benefits. Vermont Commission asserts that in moving to its "net benefits" test for economic upgrades, NEPOOL has tacitly conceded that the costs of some transmission upgrades may receive regional support without providing any benefits to some customers; thus, Vermont Commission argues, the tightly-integrated nature of the New England grid does not guarantee that all points on the system will benefit from all upgrades to the system. Central Maine, Vermont Commission and Maine Commission state that the "net benefits" approach will result in load in some subregions paying for upgrades that will not benefit them and may actually raise their energy costs.

16. NEPOOL and ISO-NE state in their response that, as the Commission has previously held, "the integrated grid is a cohesive network whose expansion benefits all users of the grid and has rejected the direct assignment of integrated grid facilities," even in circumstances where those facilities would not have been installed absent a specific request for service,¹² and that the TCA proposal is consistent with the Commission's prior directives ordering NEPOOL and ISO-NE to develop an objective and non-discriminatory test that will apply equally to all eligible transmission. NEPOOL and ISO-NE further cite to the Commission's Standard Market Design Notice of Proposed

¹¹ December 18 Order at P 39.

¹² NEPOOL and ISO-NE response at 5, *citing Entergy Mississippi, Inc.*, 102 FERC ¶ 61,105 at P 8 (2003).

Rulemaking (SMD NOPR) and Order No. 2003.¹³ Additionally, NEPOOL and ISO-NE assert that this policy is particularly appropriate for high-voltage, tightly-interconnected systems such as the New England grid, and that improvements to one part of the regional grid can produce reliability and economic benefits throughout the grid. NEPOOL and ISO-NE further state that the Commission properly approved the TCA Amendments because the proposal provides a clear, transparent and non-discriminatory method for allocation transmission upgrade costs, and ensures that only needed upgrades that provide a region-wide benefit will receive regional cost support, and only in the event that market based resources such as generation, merchant transmission or demand response do not first address the need.

17. NEPOOL and ISO-NE further state that the TCA proposal is not inconsistent with LMP. Rather, NEPOOL and ISO-NE argue, the Commission's policy does not require that new transmission be priced in the same way as new generation: while merchant transmission and merchant generation should be participant funded because those upgrades are undertaken to capture market opportunities, reliability and economic upgrades provide needed improvements in the system. NEPOOL and ISO-NE also point out that, as the Commission has stated, the August 14, 2003 blackout showed the urgent need for more investment certainty to ensure the construction of more transmission capacity, and that the Commission properly approved the conclusion of ISO-NE, the entity responsible for reliability planning in New England, that regional cost support for upgrades is the optimal method for achieving that investor certainty.¹⁴

18. Central Maine, in its answer to NEPOOL's and ISO-NE's response, states that it is inappropriate to extrapolate the policy of approving rolled-in rate treatment for upgrades to a single utility to the policy for a regional transmission organization, and also cites to a Commission policy statement supporting incremental pricing with regard to expansions

¹³ *Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design*, Notice of Proposed Rulemaking, 67 Fed. Reg. 55,541 (Aug. 29, 2002), FERC Stats. & Regs. ¶ 32,563 (2002) (SMD NOPR) and *Standardization of Generation Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,846 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003). Central Maine, in its answer, argues that NEPOOL and ISO-NE mischaracterize the SMD NOPR, which Central Maine believes supports participant funding rather than rolled-in pricing.

¹⁴ NEPOOL and ISO-NE state that, despite arguments that investment certainty could be obtained without a default cost allocation method, in fact, "there is a significant difference between ultimate cost recovery certainty, after protracted litigation over who benefits from a particular upgrade . . . and knowing in advance of a project proposal how and from whom project costs will be recovered." NEPOOL and ISO-NE response at 16.

of natural gas pipelines.¹⁵ Central Maine also asserts that the TCA proposal is driven more by the need to ensure expeditious construction of new transmission capacity than by the question of what might be a just and reasonable means of cost allocation.

2. Commission Decision

19. The Commission denies rehearing. We reaffirm our finding that the TCA Amendments are a reasonable default approach for assigning costs of new transmission facilities when parties do not generally agree on the beneficiaries. The approach enjoys widespread support among participants and is consistent with ISO-NE's current PTF/non-PTF rate structure.

a. The TCA Amendments will ensure regional cost support for upgrades that provide region-wide benefits.

20. With regard to reliability upgrades, NEPOOL and ISO-NE have stated that they "are necessary to ensure that the New England region as a whole meets established reliability criteria [and] that uninterrupted electricity service can be provided throughout the entire New England region."¹⁶ As to economic upgrades, NEPOOL and ISO-NE state:

Economic Upgrades are those upgrades that are defined in the planning process to provide net economic benefits to the region. To project whether there are likely to be net economic benefits to the region, ISO-NE analyzes among other things load projections both regionally and locally, generator availability, fuel costs and availability, proposed new generator projects and their likelihood of completion[,] . . . energy costs, operating reserve charges, system losses, capacity costs, and other regional or location specific market costs.¹⁷

21. As the above description shows, ISO-NE takes the view that economic upgrades may provide net regional benefits by lowering costs to participants overall in multiple areas, even though some parties' costs, for some periods, may actually go up, on a net basis, costs to all market participants will decrease.

¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 90 FERC ¶ 61,128 (2000).

¹⁶ Transmittal letter at 7-8.

¹⁷ *Id.* at 8.

22. Further, ISO-NE initially proposed to provide regional cost support for economic upgrades only if they provided economic benefits to each sub-area of New England. The NEPOOL Participants Committee, however, concluded that this proposal would lead to difficult and time-consuming debates as to whether each proposed upgrade provides benefits to each New England sub-region, thus effectively eliminating the most useful benefit of a default mechanism – *i.e.*, its certainty and ease of administration. Additionally, market participants argued,

[U]nder standard market design in New England, economic beneficiaries among and within sub-areas of the region can change rapidly as trading patterns, bid strategies, generator availability and fuel prices . . . change. As a result, because of the dynamic and tightly-integrated nature of the New England bulk power system, and because of the short-lived nature of economic benefits, distinguishing economic costs and benefits on a sub-area basis provide[s] an unreasonable test for determining whether an [economic upgrade] should be given regional cost support.¹⁸

23. As NEPOOL and ISO-NE have argued, because the New England system is so tightly integrated, the net benefits of system upgrades vary from one period to another and across regions as supply and demand conditions vary. Thus, NEPOOL and ISO-NE assert, it would be unreasonable to measure beneficiaries over the life of an upgrade with sufficient specificity to warrant differential cost assignments. Furthermore, cost allocation concerns should not be allowed to prevent upgrades that result in a more efficient dispatch of generation. For example, although Central Maine asserts that some Maine customers might actually see their costs rise as the result of an upgrade, in fact, upgrades that give low cost generation in Maine greater access to load could also provide lower wholesale energy costs for the region. Although the approach favored by Central Maine, under which economic upgrades provide system-wide benefits only if they provide benefits equally to each sub-region of New England, or the approach favored by the Coalition, under which economic upgrades would receive 75 percent participant funding and 25 percent regional cost support, might also yield reasonable results, the test for the Commission is whether the approach proposed by the utility, NEPOOL and its partner ISO-NE, is just and reasonable in itself. The Commission finds that it is.

b. The TCA Amendments are an acceptable regional choice

24. The Commission first ordered NEPOOL and ISO-NE to develop a consensus proposal among its members as to an appropriate default mechanism in 2000, and since that time, the Commission has been urging NEPOOL and ISO-NE to develop ways to allocate the costs of transmission upgrades so that necessary improvements that will

¹⁸ *Id.* at 5.

address New England's urgent reliability needs can be built. NEPOOL and ISO-NE have now arrived at a proposal which, while clearly not an entirely consensus proposal, was approved by nearly 80 percent of NEPOOL members, a sufficient majority for NEPOOL to submit the filing to the Commission. It is our view that NEPOOL and ISO-NE have met the Commission's requirement of developing a regional choice, and the Commission will respect that choice.¹⁹

25. Additionally, the Commission has made clear that it has never prejudged what mechanism the New England parties would find the most appropriate to implement the allocation of costs to the parties who cause those costs to be incurred. In an order issued on December 20, 2002, the Commission stated that it had not foreclosed a mechanism under which the costs of Pool Transmission Facilities (PTF) received regional support, and the costs of non-PTF facilities were allocated to specific beneficiaries.²⁰ Earlier, in its June 28, 2000 Order, the Commission had stated that while it generally supported the assignment of the costs of upgrades to the parties who benefit from them, "we recognize that upgrades of transmission networks often benefit essentially the entire grid rendering any specific cost assignment impractical because net benefits are too diffuse."²¹

¹⁹ Vermont Commission and Central Maine argue on rehearing that the Commission improperly concluded that market participants in NEPOOL had made a regional choice to support the TCA Amendments solely on the basis of a "head count." Vermont Commission further asserts that if the Commission wished to be guided by regional choice, it should not have rejected the original proposal developed in the NEPOOL Tariff Committee (a proposal which Vermont Commission claims had broader support than the filing endorsed by the NEPOOL Participants Committee because it included representatives of state regulators and consumer advocates). But in fact, a majority of NEPOOL participants, 78 percent, voted in favor of the TCA proposal. Vermont Commission and Central Maine appear to argue that, because state regulators did not approve the proposal, it did not have adequate support. However, the NEPOOL Participants Committee includes a broad variety of NEPOOL stakeholders, including transmission owners, generation owners, and customers, and as NEPOOL and ISO-NE point out, "the interests of transmission customers are represented [within the NEPOOL Participants Committee] by Publicly-Owned Entities, the End Users, and some transmission owners . . . all of [which] supported the [TCA] Amendments by wide margins" (transmittal letter at 21).

²⁰ See *New England Power Pool and ISO New England, Inc.*, 101 FERC ¶ 61,344 at P 59-51 (2002) (December 20 Order).

²¹ June 28, 2000 Order at 62,076-77.

The TCA Amendments are consistent with the Commission's intent to respect New England's determination as to the allocation of the costs of upgrades, if that determination is just and reasonable.

c. The TCA Amendments are consistent with NEPOOL's PTF rate structure

26. Under NEPOOL's current rate structure, transmission owners recover the costs of designated PTF facilities through a single, pool-wide postage stamp PTF rate.²² While other regional operators use a license plate rate design and a default cost allocation mechanism consistent with that rate design,²³ in New England, customers of different transmission owners and customers in different regions all pay the same PTF transmission rate. Absent agreement that specific costs of PTF upgrades can be assigned to designated beneficiaries, the TCA Amendments would continue with ISO-NE's tradition of recovering the costs of PTF upgrades from all customers, without regard to where the facilities are located or which transmission owner is responsible for their construction. The TCA proposal thus complements NEPOOL's single regional price for transmission. The TCA Amendments do not, therefore, abandon cost causation principles: if all members of a system will benefit, on a net basis, from an upgrade, then it is reasonable to consider all the members of the system to have created the need for that upgrade. While this approach may differ from that taken by other transmission system

²² In a recent order establishing a regional transmission organization (RTO) for New England, the Commission accepted a five-year moratorium on rate design changes and new transmission allocation methodologies for New England. *ISO New England, Inc.*, 106 FERC ¶ 61,280 at P 65, 71, *order on reh'g*, 109 FERC ¶ 61,147 (2004).

²³ Under a license plate design, a customer's rate may change based on its location. In PJM Interconnection, LLC (PJM), each zone has its own unique license plate rate. For reliability upgrades, PJM's default cost allocation mechanism assigns the costs of each reliability upgrade to the various zones that will benefit from it, which determination will depend in part on the facility and the transmission owner or owners responsible for building the upgrade. For economic upgrades, under its new RTEP process, PJM will designate the beneficiaries of new economic upgrades within the zone of the upgrade, and assign the costs to them. In circumstances where the entire pool benefits, PJM's cost allocation mechanism allows for pool-wide cost recovery of both economic and reliability upgrades. New York also has a license plate rate structure. The New York Independent System Operator (NYISO) has not yet implemented its regional planning mechanism, but has noted that, with regard to reliability upgrades, New York stakeholders consider a "beneficiary pays" approach to cost allocation issues (NYISO transmittal letter in Docket No. ER04-1144-000, filed August 20, 2004, at 7).

operators, we cannot say that it is unjust and unreasonable for New England. Further, we continue to accept the selection of ISO-NE, the independent system operator charged with ensuring the reliability of the system, as the appropriate decision-maker (aided by the views and analyses of the market participants in the planning process) for deciding which transmission costs should be recovered in PTF rates.

d. The TCA Amendments are not inconsistent with LMP or principles of competition between transmission and generation solutions

27. The default cost allocation method chosen here is not inconsistent with the fact that LMP has now been implemented in New England. The purpose of LMP is to bring about greater transparency and provide market participants with sufficient information to make investment decisions. As NEPOOL and ISO-NE have stated, however, LMP may not yet create sufficient incentives to bring about all of the new transmission required for New England.²⁴ NEPOOL and ISO-NE have a responsibility to ensure that sufficient transmission is built to provide for system needs. Given the current state of the market, it is reasonable for ISO-NE and NEPOOL to continue to ensure, through the RTEP process, that sufficient transmission development takes place to meet system needs, while at the same time providing for and encouraging market responses to address transmission and generation needs.

28. As to competition between generation and transmission solutions to congestion or other problems, NEPOOL and ISO-NE have argued that generation and transmission should be treated differently. They view energy as a commodity that is transmitted and used instantaneously, so that it is appropriate to send real-time, location-specific price signals (via LMP) because the supply of and demand for generation varies from moment to moment and from location, so that its costs and benefits are more discretely quantifiable. NEPOOL and ISO-NE compare transmission upgrades, by contrast, to "the

²⁴ NEPOOL and ISO-NE cite a paper prepared by ISO-NE's Independent Market Advisor, Dr. David Patton (transmittal letter at 17, emphasis omitted), in which he states:

[T]he private investment process . . . is the investment method most consistent with LMP because it relies entirely on the economic signals provided by the LMP system to generate privately funded new investment. When this is insufficient, it is justified to allocate costs of large investments made pursuant to a regional planning process since such investments will not likely be adequately compensated through new [Congestion Revenue Rights] and because the network effects are more likely to be regional in scope. Allocating these costs more broadly is not inconsistent with LMP since it will occur in cases where the LMP signals are insufficient to bring about economically efficient or necessary new investment.

national highway system that is paid for by all taxpayers, because its benefits and costs are long-lasting and diffuse."²⁵ Additionally, NEPOOL and ISO-NE assert that the market imperfections created by congestion, which the TCA proposal would address, are themselves sometimes the obstacles to competition between generation and transmission solutions. They have noted the undesirability of transmission upgrades that could benefit the entire region being delayed or blocked by market participants who benefit from persistent congestion. NEPOOL and ISO-NE state that "generators in load pockets may seek to preserve the higher prices that they can command through the barriers that transmission constraints present to their competitors."²⁶ Again, while other approaches to this problem might also be just and reasonable, the Commission finds that the approach taken here by NEPOOL and ISO-NE is just and reasonable.

29. As to Maine Commission's and Central Maine's arguments that the TCA Amendments will not necessarily promote the construction of new transmission facilities by providing greater certainty to investors regarding cost recovery, NEPOOL and ISO-NE are looking at a different moment in the life of a project than Central Maine and Maine Commission are looking at. While it is true that, as Central Maine asserts, a lender would have the same certainty of cost recovery from a participant-funded project as from a project whose costs receive regional support, this does not speak to the fact that, when an upgrade is first planned, a lender is likely to be more willing to commit to funding an upgrade in expeditious fashion if it knows that the project's costs will receive pool-wide support, than if it fears that the cost allocation of each upgrade will have to be resolved through contentious proceedings. Thus, the Commission considers NEPOOL's and ISO-NE's approach of allowing regional cost support for a broad range of projects to be a reasonable means of achieving timely construction of new transmission.

C. The Commission did not err in approving ISO-NE's reclassification of particular projects from economic upgrades to reliability upgrades.

1. Requests for rehearing

30. Central Maine and Vermont Commission state that NEPOOL and ISO-NE have attempted to evade a cost-benefit analysis of their proposed economic upgrades by simply reclassifying all of them as reliability projects. Central Maine and Vermont Commission claim that the Commission has permitted a use of the definition of "reliability project" that is so broad as to encompass nearly all future transmission upgrades in New England, thus eliminating even the need to apply the "net benefits" test. Central Maine argues that the Commission failed to address evidence showing that the projects listed in ISO-NE's

²⁵ Transmittal letter at 18.

²⁶ *Id.* at 14.

RTEP for 2003 were not reliability projects,²⁷ and that the Commission's withdrawal from its earlier statements as to the necessity of distinguishing between economic and reliability upgrades and the necessity of determining who benefits from an upgrade so as to properly allocate costs²⁸ is inconsistent with a recent order regarding cost allocation in NYISO.²⁹

31. Maine Commission further states that it has shown that the beneficiaries of particular projects are, in fact, identifiable through the RTEP process and state siting proceedings, and the Commission has failed to engage in reasoned decisionmaking by ignoring the availability of this evidence. Central Maine claims that the projects identified through the RTEP process in 2002 and 2003 include a number of projects that would increase transfer capability out of Maine, that these are economic rather than reliability projects, and that NEPOOL and ISO-NE have refused to acknowledge evidence to this effect and reclassified these projects as necessary for reliability solely out of expediency. Central Maine also asserts that NEPOOL and ISO-NE have not pointed to any specific changes in the bulk power system, other than fuel price volatility, that would require the reclassification of economic projects as reliability projects.

32. More broadly, Maine Commission, Central Maine and Vermont Commission state that the Commission erred in accepting a regulatory scheme whereby market participants cannot challenge ISO-NE's determinations as to cost allocation unless they file complaints with the Commission. Central Maine states that this shifts the burden of proof of demonstrating that a project's cost allocation is reasonable from the project

²⁷ Central Maine also alleges that, in response to Commission Data Request 1e, NEPOOL's and ISO-NE's response is misleading. Question 1e asked, "Describe how the cost recovery for each project [in RTEP02 and RTEP03] would differ under the proposal considered by the Tariff Committee versus that approved by the Participants Committee." In response, NEPOOL and ISO-NE stated that there would be no difference in cost recovery, but Central Maine asserts that this is the case solely because ISO-NE has reclassified the projects in question from economic to reliability upgrades.

²⁸ Central Maine request for rehearing at 14-15, *citing ISO New England, Inc.*, 91 FERC ¶ 61,311 at 62,076-77 (2000) and *ISO New England, Inc.*, 100 FERC ¶ 61,287 at P 144 (2003).

²⁹ Central Maine states that the Commission ordered NYISO to cease providing regional support for the costs of its thunderstorm alert program, even though that program clearly provided some region-wide reliability benefits. Central Maine request for rehearing at 16, *citing New York Independent System Operator*, 102 FERC ¶ 61,284 (2003).

sponsors to ratepayers. Central Maine alleges that this shift will lead to the "gold-plating" of projects, since parties opposing particular aspects of a project will have limited opportunities to challenge those costs and limited access to information.

33. In their response, NEPOOL and ISO-NE state that, by asking the Commission to review ISO-NE's designation of each project as a reliability upgrade, rather than simply reviewing the authority that ISO-NE will exercise and the criteria that it will use, rehearing petitioners are asking the Commission to engage in a more searching inquiry than necessary. NEPOOL and ISO-NE argue that the Commission properly found that the default cost allocation mechanism provided by the TCA Amendments is just and reasonable, and that ISO-NE's determination as to any individual project does not bear on this question; thus, no further regulatory action is appropriate. As to the question of whether the RTEP02 and RTEP03 upgrades were properly reclassified as reliability rather than economic upgrades, despite in some cases having initially been designated otherwise by their sponsors, NEPOOL and ISO-NE state that "the change in categorization reflects the dynamic nature of planning and the evolving needs of the system."³⁰

2. Commission Decision

34. As NEPOOL and ISO-NE's initial filing here shows, provisions in the NEPOOL tariff prior to the December 18 Order grant ISO-NE broad discretion to determine what upgrades are necessary for system reliability. ISO-NE classifies upgrades as reliability upgrades or economic upgrades during the RTEP process, which collects input from all stakeholders (including state regulators, public interest groups and retail customers) through the Transmission Expansion Advisory Committee (TEAC). Reliability Upgrades are defined in section 1.106 of the NEPOOL tariff as:

upgrades that are not required by the interconnection of a generator that are nonetheless necessary to ensure the continued reliability of the NEPOOL system, taking into account load growth and known resource changes, and include those upgrades necessary to provide acceptable stability response, short circuit capability and system voltage levels, and those facilities required to provide adequate thermal capability and local voltage levels that cannot otherwise be achieved with reasonable assumptions for certain amounts of generation being unavailable (due to maintenance or forced outages) for purposes of long-term planning studies. Good Utility Practice, applicable reliability principles, guidelines, criteria, rules, procedures and standards of NERC and NPCC and any of their successors, applicable publicly available local reliability criteria, and the NEPOOL System Rules,

³⁰ NEPOOL and ISO-NE response at 21.

as they may be amended from time to time, will be used to define the system facilities required to maintain reliability in evaluating proposed Reliability Upgrades.³¹

35. In addition to the input it receives from the TEAC, ISO-NE identifies reliability upgrades by conducting system resource adequacy assessments in accordance with North American Electric Reliability Council (NERC), Northeast Power Coordinating Council (NPCC) and NEPOOL Planning Procedure guidelines.³²

36. Some parties claim that the TCA proposal provides an incentive to classify facilities as reliability projects and thus obtain regional cost support, but as NEPOOL and ISO-NE state, the question is whether those projects meet ISO-NE's criteria for reliability projects: if they do, then the project sponsor's label is not controlling. Further, under the regulatory scheme in place prior to the TCA Amendments, NEPOOL's tariff does not provide for a project-by-project appeal of every determination made by ISO-NE. All parties are free to participate in the TEAC, which advises ISO-NE as to the upgrades that it includes in its RTEP, but the tariff provisions currently do not provide for parties to challenge ISO-NE's determination of the status of each upgrade. Indeed, to permit an appeal of each such determination would eliminate the benefits that a default mechanism should provide: speed, simplicity, and certainty. The rehearing petitioners' arguments that, because some projects can allegedly be shown largely or solely to benefit certain parties, they should of necessity be funded by those parties, is an untimely challenge to the provisions of the NEPOOL tariff granting ISO-NE broad authority to determine the reliability needs of the system, and the Commission will deny it on that basis.³³

³¹ Transmittal letter at 7-8.

³² *Id.*

³³ Further, as to Central Maine's allegation regarding increased possibilities for gold-plating, we again note, as we stated in the December 18 Order, that participants have the right to challenge determinations for costs specific to particular projects which ISO-NE may determine are not reasonable to be supported on a regional basis, such as the construction of transmission lines underground when such construction is not justified. December 18 Order at P 46.

D. The Commission will not require NEPOOL and ISO-NE to revise their process for classifying upgrades and generator interconnections.

1. Requests for rehearing

37. Calpine argues that the TCA Amendments do not provide a procedure to permit a generator interconnection related upgrade (for which costs would be allocated to the generator) to be reclassified as a regional benefit upgrade (for which costs would receive regional support). Calpine states that it is raising this issue in NEPOOL stakeholder discussions, but that NEPOOL has not implemented this reclassification procedure. Separately, Calpine asserts that elective transmission upgrades (which it states are "elective" only in that they were built earlier than the RTEP identified them as necessary) should also be able to obtain regional cost support, because in some circumstances, an upgrade that would otherwise be required for reliability will be built sooner than necessary by a generator. Calpine asserts that in these circumstances, there should be some means to encourage such early construction through providing the opportunity for the generator's facility to receive regional cost support at the time it begins providing reliability or economic benefits, and that, absent such a mechanism, a generator is, in essence, being forced to pay twice for the same upgrade through prohibited "and" pricing (*i.e.*, Calpine asserts that it would pay for an upgrade once when the upgrade's costs are assigned to it directly, and once when it pays for use of the overall grid, to which it has already contributed by building the upgrade). Calpine asks the Commission to require NEPOOL and ISO-NE to develop procedures to prevent this result.

38. NEPOOL and ISO-NE state in their response that, with regard to Calpine's request regarding the cost allocation for generator interconnections, NEPOOL and ISO-NE argue that Calpine is making a collateral attack on Schedule 11, which governs the allocation of the costs of Generator Interconnection Related Upgrades. Schedule 11 was established as part of the tariff in 2001, and NEPOOL and ISO-NE state that Calpine's request for review of that Schedule is untimely. Additionally, NEPOOL and ISO-NE point out that Calpine is already pursuing its attempt to change Schedule 11 through the NEPOOL stakeholder process.

2. Commission Decision

39. Calpine's argument in essence seeks to engraft onto the current filing, which speaks to the allocation of the costs of transmission upgrades, a challenge to ISO-NE's process for determining the status of an upgrade or a generator interconnection as either the kind of facility that should received regional cost support, or the kind that should not. We will deny Calpine's request to order ISO-NE to change its processes in this regard.

40. With regard to generator interconnections, the process by which the determination is made whether generator interconnections provide pool-wide benefits, and the allocation of costs for generator interconnections, is currently set forth in Schedule 11 of the NEPOOL tariff. With regard to the redesignation of an elective upgrade (which does not receive regional cost support) as a type of upgrade that would receive regional cost support, while the NEPOOL tariff provides for parties to have input into ISO-NE's initial determination of the status of a proposed upgrade through participation in the TEAC, the tariff does not currently provide for periodic evaluation of participant funded facilities over the life of the facilities to assess their potential reliability benefit to the grid. Both of these provisions were in the tariff prior to the filing of the TCA Amendments, and any challenge to those provisions in this proceeding is an impermissible collateral attack. We encourage parties who wish to change those tariff provisions to work through the NEPOOL stakeholder process to accomplish those changes (as Calpine is already doing with regard to generation interconnections).

E. Central Maine's motion for clarification

1. Request for rehearing

41. On February 19, 2004, Central Maine filed a motion asking the Commission to clarify that the December 18 Order does not constitute an order on rehearing in certain related dockets. Central Maine states that there are still rehearing requests pending of the Commission's December 20 Order, as to the allocation of the costs of particular upgrades for Southwest Connecticut (SWCT). Central Maine asks the Commission to clarify that the December 18 Order does not dispose of the question of the allocation of costs of the SWCT upgrades.

2. Commission Decision

42. The Commission hereby grants the clarification sought by Central Maine. In orders subsequent to the December 20 Order, the Commission stated that it would make a final determination as to the allocation of the costs of upgrades for SWCT when it considered the TCA Amendments.³⁴ In an order issued June 6, 2003, the Commission stated:

³⁴ See *New England Power Pool and ISO New England, Inc.*, 103 FERC ¶ 61,304 at P 56 (2003) ("we will not rule at this time on the pending requests for rehearing and clarification regarding any issues as to the allocation of costs for transmission upgrades, both in SWCT and elsewhere in New England").

In the July 7 compliance filing, ISO-NE and NEPOOL also provided a proposal for a stakeholder process to resolve the question of which transmission upgrades in SWCT should receive socialized cost treatment . . . The Maine Commission and NRG state that they are protesting this portion of the compliance filing. The TCAs have now been filed with the Commission in Docket No. ER03-1141-000. The issue of the allocation of the costs of transmission upgrades for SWCT will be decided in that docket, and NEPOOL's and ISO-NE's compliance filing on that subject, as well as the Maine Commission's and NRG's protests, have thus been rendered moot.³⁵

43. In filing the TCA Amendments, NEPOOL and ISO-NE state, with regard to "upgrades located in Southwest Connecticut as identified by ISO-NE in RTEP02," that "[t]he principles and recommended methodology [of this filing] would provide regional cost support to needed transmission upgrades that are 115 kV and above and that meet certain functional criteria. The upgrades for Southwest Connecticut meet these criteria." Thus, ISO-NE proposed to provide regional cost support for 100 percent of the costs of the SWCT upgrades.³⁶

44. Because the Commission has approved the TCA proposal, including accepting ISO-NE's and NEPOOL's proposal to provide regional support for the costs of the SWCT upgrades, we find that the appropriate allocation formula for upgrades for SWCT is, as NEPOOL and ISO-NE have stated, 100 percent regional cost support.³⁷

³⁵ *New England Power Pool and ISO New England, Inc.*, 105 FERC ¶ 61,211 at P 54-55 (2003).

³⁶ Transmittal letter at 4 n.11.

³⁷ By "the upgrades for Southwest Connecticut" referenced at page 4, footnote 11 of the transmittal letter, we assume ISO-NE and NEPOOL are referring to the projects listed in the category of "Southwest Connecticut Reliability Reinforcement" in Schedule 12B – RTEP02 Upgrades, Original Sheet No. 229N.

The Commission orders:

The petitions for rehearing are denied, and Central Maine's motion for clarification is granted, as discussed above.

By the Commission. Commissioner Brownell dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Pool and
ISO New England, Inc.

Docket Nos. ER03-1141-003

Maine Public Utilities Commission

EL03-222-003

v.

New England Power Pool and
ISO New England, Inc.

(Issued December 2, 2004)

Nora Mead BROWNELL, Commissioner *dissenting in part*:

For the reasons I provided in my dissent to the December 18 Order, I would grant the rehearing requests of the Central Maine Power Company, the Vermont Department of Public Service, and the Maine Public Utilities Commission.

Nora Mead Brownell